

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No.915 of 2012 April  
Cuttack this the 4<sup>th</sup> day of March, 2016

Srikanta Mohanta ...Applicant

-VERSUS-

Union of India &Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? No
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not? No

  
(R.C.MISRA)  
MEMBER(A)

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O.A.No. 915 of 2012 <sup>April,</sup>  
Cuttack this the ~~4th~~ day of ~~March~~, 2016

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HON'BLE SHRI R.C.MISRA, MEMBER(A)

Srikanta Mohanta  
Aged about 29 years  
S/o Late Markanda Mohanta  
Ex.Sr.TPM/RRP,  
At: Ichinda,  
P.O/P.S. Rairangpur,  
Dist. Mayurbhanj,  
Odisha.

...Applicant

By the Advocate(s)- M/s. P.R.Barik  
P.Choudhury

-VERSUS-

Union of India represented through:

1. General Manager,  
South Eastern Railway,  
Garden Reach,  
Kolkata 43.
2. Senior Divisional Personnel Officer,  
South Eastern Railway,  
Divisional Office Railway,  
Chakradharpur,  
Dist. East Singhbhum,  
Jharkhand.
3. Station Manager,  
South Eastern Railway,  
At/P.O./P.S.-Rairangpur,  
District Mayurbhanj.

...Respondents

By the Advocate(s)- Mr.T.Rath

**ORDER**

**R.C.MISRA, MEMBER (A)**

Applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985, challenging the communication dated 31.08.2012(A/5) issued by the Sr. Divisional Personnel Officer, Chakradharpur (respondent No.2) whereby his prayer for compassionate appointment has been rejected. Therefore, applicant has prayed for

quashing the said impugned communication (A/5) with direction to be issued to respondents to consider his case for compassionate appointment.

2. Facts of the case as narrated in the O.A. are that one Markanda Mahanta, while working as Sr. T.P.M., under the Station Manager, Rairangpur, South Eastern Railways passed away on 13.08.1999, leaving behind two wives, one son (applicant) and <sup>two</sup> ~~to~~ daughters. At the time of death of his father, applicant was a minor. However, on attaining majority, he made an application seeking compassionate appointment to the railway authorities, which was rejected on the ground that applicant is the son of 2nd wife.

3. In support of his case, applicant has pleaded that even if he is the son of the 2nd wife, but the fact remains, he is the son of the deceased railway employee and after the sudden demise of his father, the family is in penurious condition. It has also been pleaded that the respondents have admittedly sanctioned retiral benefits and family pension in favour of the 2nd wife. Therefore, under the scheme, compassionate appointment is to be provided to one of the family members. In view of this, it has been urged that findings of the respondents that son of the 2nd wife is not entitled to compassionate appointment are misconceived and do not stand to judicial scrutiny. In the end, applicant has submitted that the whole object of providing compassionate appointment being to mitigate the indigent condition due to sudden <sup>demise</sup> of the sole breadwinner, respondents have committed an illegality in not considering his case in its proper perspective.

4. On the other hand, by filing a detailed counter, respondents have opposed the prayer of the applicant. It has been submitted applicant's application for employment assistance on compassionate grounds has been carefully examined and it is observed from the legal heir certificate that he is the son of the 2nd wife of <sup>the</sup> ~~your~~ deceased railway employee. They have further submitted that during the course of investigation, the status of the deceased employee's family came to be known. Regarding the ground of

rejection of prayer for compassionate appointment, the respondents have brought to the notice of the Tribunal that in view of Estt.Srl.No.20/92, children from the second marriage shall be entitled for a share in the settlement dues, but not for employment assistance on the ground that such a marriage is to be considered null and void. Further, relying on Railway Board's circular dated 02.01.1992, it has been mentioned that children of second marriage of the employee shall not be eligible for compassionate appointment unless the employee obtained the permission for second marriage, which could have been granted only in special circumstances. But in the instant case, the deceased employee had not obtained any permission for the 2<sup>nd</sup> marriage. Respondents have submitted that in terms of Section-5 read with Section 11 of the Hindu Marriage Act, any marriage solemnized after the commencement of Hindu Marriage Act, 1955, in violation of Clause(1) of Section 5 shall be null and void. Apart from the above, Respondents have raised point that after lapse of 13 years of the date of death of railway employee, applicant applied for employment assistance on compassionate grounds and therefore, the O.A. suffers delay and laches.

5. Applicant has filed a rejoinder to the counter-reply. While denying the point of delay in approaching the authorities for compassionate appointment, applicant has submitted that since the respondents have acknowledged and regarded the 2<sup>nd</sup> marriage by consequently granting retiral dues and family pension, the plea that the son of 2<sup>nd</sup> wife is not entitled to compassionate appointment, especially, when the deceased employee had not obtained any permission for 2<sup>nd</sup> marriage is not sustainable.

6. Heard the learned counsel for both the sides and perused the records. I have also gone through the written notes of submission filed by both the sides.

7. In his written notes of submission, learned counsel for the applicant has brought to my notice the decision of the CAT, Principal Bench in O.A.No.3424 of 2012 in the matter of Pankaj Kumar vs. Union of India. In its judgment dated 29.1.2014, the Principal Bench



has dealt with the Railway Board Circular dated 2.1.1992 and held that it does not deprive the children of second wife of the right to be considered for appointment on compassionate ground. A perusal of the orders of the Principal Bench reveals that it is based upon the judgment of the Hon'ble Apex Court in Rameswari Devi case, and also the judgment of Hon'ble Calcutta High Court in Namita Goldar case. The Hon'ble High Court of Calcutta in Namita Goldar case observed that in view of the decision of the Hon'ble Apex Court in Rameswari Devi, the children of the second wife cannot be treated as illegitimate and referring to Section 16 of the Hindu Marriage Act specifically held that the children of a void marriage are legitimate. The Hon'ble High Court of Calcutta further observed as follows.

"We are, however, of the opinion that the circular issued by the Railway Board on 2<sup>nd</sup> January, 1992 preventing the children of the second wife from being considered for appointment on compassionate ground cannot be sustained in the eyes of law in view of the specific provision of the Hindu Marriage Act, 1955 and pursuant to the decision of the Hon'ble Supreme Court in Rameswari Devi(supra).

In the aforesaid circumstances, the aforesaid circular issued by the Railway Board on 2<sup>nd</sup> January, 1992, stands quashed to the extent it prevents the children of the second wife from being considered for appointment on compassionate ground".

8. On the other hand, respondents to fortify their stand have placed reliance on the decision of the Hon'ble Supreme Court in ***State Bank of India & anr. Vs. Raj Kumar (2010)118 SCC 661*** and the decision of Hon'ble Jharkhand High Court in ***W.P.(S) No.16 of 2014(M.V.V.Prakash vs. Union of India & Ors.)*** decided on 24.7.2014.

9. I have considered the rival submissions and given our anxious thoughts to the arguments as advanced.

10. Facts in issue are that the deceased railway employee had three wives. The first wife Latikamani died issueless. Applicant is the son of the second wife, Bipatti Mohanta and at the time of death of his father, he was minor. After the death of the deceased



employee, retiral benefits including the family pension have been settled in favour of the 2<sup>nd</sup> wife, Bipatti Mohanta. Therefore, it goes without saying that ~~there is~~<sup>there is</sup> no claim whatsoever has been laid by the third wife of the deceased employee. This point is more clear from the impugned communication dated 31.8.2012(A/5) by virtue of which compassionate appointment in favour of the applicant has been rejected on the ground that he is the son of the 2<sup>nd</sup> wife and as per extant rules, there is no provision to give appointment to the ward of the 2<sup>nd</sup> wife. In this connection, respondents have placed reliance on the Railway Board's circular dated 02.01.1992 which stipulates that children of second marriage of the employee shall not be eligible for compassionate appointment unless the employee obtained the permission for second marriage, which could have been granted only in special circumstances. Admittedly, the deceased railway employee had not obtained permission from the authorities for a contract of 2<sup>nd</sup> marriage. Be that as it may, to resolve the issue in hand, the decisions relied on by ~~either~~<sup>both</sup> of the parties cited supra are of much relevance.

11. In this connection, I have gone through the decision of Hon'ble Jharkhand High Court in M.V.V.Prakash case. It reveals from the said decision that earlier, applicant, M.V.V.Prakash had moved CAT Circuit Bench at Ranchi in O.A.No.124/2012(R) challenging the impugned order of the railway authorities wherein his claim for compassionate appointment had been rejected on the ground that he is the son of the 2<sup>nd</sup> wife. CAT Circuit Bench at Ranchi, following the judgment of the Hon'ble Jharkhand High Court in W.P.(S) No.4461/2008(Basanti Devi & Ano.) and batch cases, dismissed the said O.A. holding that since the Railway administration issued RBE No.1/92 on 2.1.1992 that the children through the second wife shall not be eligible for compassionate appointment and since there is specific bar, the petitioner was not entitled to be considered for compassionate appointment.



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12. It was contended before the Hon'ble Jharkhand High Court in M.V.V.Prakash case (supra) that in the case of Smt.Namita Goldar and Anr. Vs. Union of India (2010(1)CLJ(Cal), the Hon'ble Calcutta High Court had quashed the Railway Circular RBE No.01/92 dated 2.1.1992 and ordered employment to the son of the second wife and similar orders were passed by the various coordinate Benches of the CAT or High Court, which was within knowledge of the Railways, but the Railways arbitrarily rejected the claim of the petitioner, which is unsustainable in law.

13. On the contrary, it was the submission of the respondents that as per the Railway Circular RBE No.01/92 dated 2.1.1992, children through the second wife shall not be eligible for compassionate appointment unless the employee obtained permission for such second marriage from the Railways and the ex-employee, M.Narasingha Rao, had not obtained such permission and as per the said Circular, the petitioner is not eligible for compassionate appointment and the CAT dismissed O.A.No.124/2012. Placing reliance upon 2010(11) SCC 661 (State Bank of India vs.Raj Kumar), it was the contention of the respondents that the claim for compassionate appointment is traceable only to the Scheme framed by the employer and there is no right whatsoever outside the Scheme and therefore, CAT rightly followed the judgment of the Jharkhand High Court in the case of Basanti Devi's case and the order of CAT did not suffer from any infirmity. In this connection, the relevant portion of the judgment of the Hon'ble Jharkhand High Court in M.V.V.Prakash (supra) reads thus.

"Learned Senior Counsel for the petitioner mainly relied upon Smt.Namita Goldar And Ano. (1010(1)CLJ(Cal)464), wherein while considering the appointment of the son of the second wife on compassionate appointment, Calcutta High Court quashed the Railway Circular dated 2.1.1992. Learned Senior Counsel contended that the judgment of the Calcutta High Court was followed by the CAT, Circuit Bench at Ranchi in O.A.No.212/12 and the said judgment had been passed by the CAT after considering all the judgments passed by the Principal Bench of CAT, New Delhi and also by the Calcutta High Court and while so, the respondents and the CAT erred in brushing aside the judgment in Smt.Namita Goldar's case (2010(1)CLJ(Cal)464). We have



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perused the judgment of Smt.Namita Goldar. ***The said case is clearly distinguishable on facts. In the said case, the first wife of the Railway employee was issueless and the second marriage was accepted by the first wife without any protest and the first wife did not challenge the second marriage of her husband, nor the first wife lodged any complaint before the authorities. That apart, the first wife died issueless soon after the death of the Railway employee and in those facts and circumstances of the case, Calcutta High Court held that the son of the second wife is eligible to be considered for job on compassionate ground. The facts of the present is clearly distinguishable from that of Smt.Namita Goldar's case***".

14. While drawing an inference that the facts in Smt.Namita Goldar's case and the facts in M.V.V.Prakash are quite distinguishable, the Hon'ble Jharkhand High Court concluded as under.

"Compassionate appointment is matter of policy of the employer and the employer cannot be compelled to provide compassionate appointment contrary to its policy/scheme. When there is specific circular which clearly provides that the children of second marriage of the employee shall not be eligible for compassionate appointment, no direction can be issued to the respondents to consider the case of the petitioner. Following the judgment of the Division Bench of this Court in Basanti Devi (WP(S) No.4461/2008 and WP(S) No.4495/2008 and WP(S) No.1083/2010), the CAT has rightly dismissed O.A.No.124/2010 and we do not find any reason to interfere with the same.

In the result, this writ petition is dismissed".

15. From the above, now the Tribunal has to examine as to whether the facts in Smt.Namita Goldar's case are similar to the facts of the instant O.A.

16. In Smt.Namita Goldar's case the first wife had died issueless whereas in M.V.V.Prakash's case, the facts were that his father M.Narasingh Rao had earlier married one Mylapalli Sokhubhayi and out of the first marriage, he had one daughter named Pukkalla Radha and the said Pukkalla Radha is married to one Suresh. M.V.V.Prakash's mother, Uma Devi is the second wife of M.Narasingha Rao and as per the documents available, all the payments of the ex-employee had been drawn in favour of Uma Devi. Therefore, the distinction between Smt.Namita Goldar's case and M.V.V.Prakash's case as

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held by the Hon'ble Jharkhand High Court was that in the former, the first wife had died issueless whereas in the latter the first wife is having a married daughter.

17. In the instant case, there is no doubt that the first wife of the deceased employee had died issueless after the death of the deceased employee and apparently, the second marriage had been accepted by the first wife without any protest. Applicant's mother being the second wife, retiral dues and family pension have been decided in her favour. Therefore, facts of this case being similar to the facts in Smt.Namita Goldar's case, the ratio decidendi of Hon'ble Calcutta High Court is squarely applicable to the applicant herein.

18. The learned counsel for the respondents has defended the order of rejection dated 31.8.2012 on the ground that the Railway Board Circular No.E(NG)/II/91/RC-1/136 dated 2.1.1992 (Estt.Serial No.20/92) provides that the children of second marriage of the employee shall not be eligible for compassionate appointment unless the employee obtained the permission for second marriage which could have been granted only in special circumstances. Estt.Serial No.20/92 is the corner stone of argument of the learned counsel for the Railways. Against this background, it is significant to note that the Hon'ble High Court of Calcutta in Namita Goldar case has specifically quashed this circular of the Railway Board to the extent it prevents the children of the second wife from being considered for appointment on compassionate ground. In the face of it, the ratio of decision in Namita Goldar case lifts the embargo on children of second marriage for consideration for compassionate appointment. By bring<sup>ing</sup> this judgment to the notice of the Tribunal, the learned counsel for the applicant has successfully argued that the prayer of the applicant for compassionate appointment cannot be summarily rejected on the basis of Estt.Serial No.20/92 dated 2.1.1992.

19. In the light of above discussions, the impugned order dated 31.8.2012<sup>9</sup>(A/5) is quashed and set aside. The respondents are directed to reconsider the case of the

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applicant for providing him appointment on compassionate ground in accordance with the scheme set out in this regard and communicate their decision to the applicant within a period of ninety days from the date of receipt of the order.

20. The O.A. is allowed to the extent indicated above, with no order as to costs.



**(R.C.MISRA)**  
**MEMBER(A)**

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